

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

DONALD JOSEPH WEST,

Plaintiff,

V.

ADRIANA WORTH,

Defendant.

Case No. CIV-20-00335-PRW

ORDER

On June 15, 2020, United States Magistrate Judge Gary M. Purcell issued a Report and Recommendation (Dkt. 16) in this action. The Magistrate Judge recommends that Plaintiff's Application for Leave to Proceed In Forma Pauperis (Dkt. 5) and Amended Application for Leave to Proceed In Forma Pauperis (Dkt. 12) be denied because the "Plaintiff has sufficient financial resources to pay the filing fee as his institutional account has a current balance of \$634.40 and his average monthly deposits [for the six-month period immediately preceding the filing of this action] total \$1715.04."¹ The Magistrate Judge further recommends that the action be dismissed without prejudice to refiling unless the Plaintiff pays the full \$350.00 filing fee by July 6, 2020.

The Plaintiff was advised that he had a right to object to the Report and Recommendation (Dkt. 16) by July 6, 2020, and that failure to make a timely objection would waive any right to appellate review of the *in forma pauperis* issue. The Plaintiff

¹ R. & R. (Dkt. 16) at 1.

timely filed his Objections to the Report and Recommendation (Dkt. 18) on June 24, 2020. Therein, he asserts three objections. First, he objects to denial of the *in forma pauperis* application on the basis that he has a current balance of \$634.40 because he believes the Magistrate Judge should have considered a balance of only \$134.40 in light of his declared intent to use \$500.00 to pay child support obligations.² Second, he objects to denial of the *in forma pauperis* application on the basis that his average monthly deposits total \$1,715.04 because “[n]ever ha[s] [he] had an average monthly balance [sic] of \$1,715.04” and because he is uncertain from where that figure came³; he believes that number is either a lie concocted by Defendant Adriana Worth, who completed the certification, or a typographical error that inserted an extra number into the reported six-month average daily balance of \$175.15 for his account.⁴ Lastly, he objects to denial of the *in forma pauperis* application on the basis that his average monthly deposits total \$1,715.04 because he believes such figure must include a deposit he received from his sister *after* this lawsuit

² Pl.’s Objs. to R. & R. (Dkt. 18) at 1–2.

³ *Id.* at 2.

⁴ *Id.* at 2–3 (calling the number “untrue” and attributing it to the “caseworker/Defendant Worth who is the defendant and who did fill out the form” and later positing that there may have been a “mix[] up [of his] national 6 month Avg. Daily Balance which is \$175.15 . . . or possibly an extra number was added to that figure”); *see also* Pl.’s Am. Appl. for Leave to Proceed In Forma Pauperis (Dkt. 12) at 6 (showing that “A. Worth” was the “Authorized Prison Official” who “certif[ied] that the average monthly deposits to the prisoner’s accounts for the six-month period immediately preceding the filing of this action was: \$1715.04.”); *id.* at 7–8 (showing a print-out for Plaintiff’s institutional account that did not reveal any basis for the calculation of \$1,715.04 but that did report a “National 6 Months Avg Daily Balance” of “\$175.15”).

was filed, with the intent that such deposit be used to pay Plaintiff's child support obligations.

Plaintiff's first objection is overruled. Despite what Plaintiff's intentions might be for the available balance of \$634.40, it remains undisputed that he has \$634.40 at his disposal. He can choose to proceed with this lawsuit by paying the \$350.00 filing fee in full, or he can choose to forego this lawsuit and pay \$500.00 toward his self-reported child support obligation, which Plaintiff variously reports as \$450.00 or \$490.00 and which he admits "is on hold."⁵

Plaintiff's second and third objections are also overruled, mainly because there is a basis for requiring him to pay the entire filing fee due to his current available balance of \$634.40. But beyond that, Plaintiff has failed to present the Court with any evidence that would contradict the certified number of \$1,715.04 as his average monthly deposits for the six-month period immediately preceding the filing of this action. His argument that he has never had an average monthly *balance* of \$1,715.04 is to no avail because that number is not being reported as an average monthly balance, but instead as an average of monthly *deposits*. He also never discloses when he received a deposit of his sister's stimulus money, or how much she deposited. 28 U.S.C. § 1915(a) places the burden on Plaintiff to

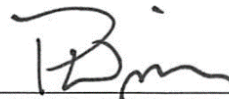
⁵ Compare Pl.'s Appl. for Leave to Proceed In Forma Pauperis (Dkt. 5) ¶ 9, at 3 (wherein Plaintiff swears under penalty of perjury that "[he] ha[s] child support of 450.00 per month *which is on hold* but I send 20.00 when possible every month" (emphasis added)), with Pl.'s Am. Appl. for Leave to Proceed In Forma Pauperis (Dkt. 12) ¶ 9, at 5 (wherein Plaintiff swears under penalty of perjury that he owes "490.00 per month child support . . . [and] pay[s] as much as [he] can").

demonstrate that he qualifies for authorization to proceed without prepayment of the filing fee. Plaintiff has not borne that burden.

Accordingly, upon *de novo* review, the Court:

- (1) **ADOPTS IN PART** the Report and Recommendation (Dkt. 16) issued by the Magistrate Judge on June 15, 2020. The recommendation to deny the application to proceed without prepayment of the filing fee is **ADOPTED**. However, the recommendation to dismiss the action without prejudice to refiling in the event Plaintiff fails to pay the filing fee by July 6, 2020, is **REJECTED**, as that deadline has already passed. Accordingly, Plaintiff is given leave to pay the full filing fee to the Court Clerk **by no later than August 11, 2020**. **If Plaintiff fails to pay the full filing fee by that date, the action will be dismissed without prejudice to refiling;** and
- (2) **DENIES** Plaintiff's Application for Leave to Proceed In Forma Pauperis (Dkt. 5) and Amended Application for Leave to Proceed In Forma Pauperis (Dkt. 12).

IT IS SO ORDERED this 21st day of July, 2020.



PATRICK R. WYRICK
UNITED STATES DISTRICT JUDGE